IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 124 OF 2003

1. Goa Housing Board,
Through Managing Director,
having office at Porvorim,
Bardez, Goa.

2. Deputy Collector,
Sub-Divisional Officer,
Ponda Sub-Division,
Ponda, Goa. .... Appellants

V/s

1. Attorney of Communidade of Mapusa
C/o. Communidade House,
Near Church, Mapusa, Goa. .... Respondent

Mr. A.N.S. Nadkarni, Advocate for the Appellants.
Mr. V. Menezes, Advocate for the Respondent.

CORAM : R.M.S. KHANDEPARKAR &
N.A. BRITTO, JJ.

DATE : 21st NOVEMBER, 2007

JUDGMENT : (per N.A. BRITTO, J.)

Challenge in this appeal is to the award dated 7/01/2003 of the learned Additional District Judge, Mapusa, enhancing the compensation from Rs. 20/- to Rs. 80/- per sq. meter.

2. Some facts are required to be stated to dispose off the present appeal.

3. By notification issued under Section 4(1) of the Land Acquisition Act, 1894 and published on Gazette dated 25/10/1984 the government acquired 10,491 sq. mts. of land forming part of Chalta No.3 of P.T. sheet No. 67 of Mapusa belonging to the Respondent-Communidade for the purpose of housing activities of the Appellant-Goa Housing Board and by award dated 29/10/1987 the Land Acquisition Officer offered to the said Communidade compensation at the rate of Rs. 20/- per sq. mt.

4. Dissatisfied with the said award of the Land Acquisition Officer, the Communidade preferred a reference and in the said reference examined 4 witnesses to support its case for enhancement. The Communidade produced an award in respect of the same land admeasuring 5585 sq. mts. acquired subsequently for water reservoir by notification published on Gazette dated 7/03/1986 by which the Communidade was paid Rs. 50/- per sq. mt. The Communidade also produced a sale deed dated 17/03/1979, Exhibit AW1/E by which a developed plot of land admeasuring 396 sq. mts. was sold at the rate of Rs. 80/- per sq. mt. and in support thereof the said Communidade examined Verlekar/AW3, the purchaser of the said plot. The Communidade also produced another sale deed dated 28/07/1988 of a plot of land admeasuring 1139 sq. mts. at the rate of Rs. 1,165/- per sq. mt. and in support thereof examined its purchaser Kamat/AW4. The Communidade had also examined an expert namely Macedo/AW2, an engineer, who had valued the

acquired land at the rate of Rs. 150/- per sq. mt. based on the aforesaid two sale deeds.

5. The Goa Housing Board had also examined 3 witnesses namely their Engineers to oppose the Communidade's claim for enhancement.

6. The Communidade's attorney Shri Braganza/AW1 in his evidence had stated that a part of the same property was acquired by the State Government for the purpose of construction of ground level water reservoir for PWD of an area of 5585 sq. mts. and had offered the Communidade compensation at the rate of Rs. 50/- per sq. mt., which land was at a distance of about 800 mts. from the acquired land and which was otherwise little sloppy while the acquired land was plain. As regards the location of the acquired land there is no dispute that the same was situated at the outskirts of Mapusa and within the jurisdiction of Mapusa Municipal Council and as stated by the said attorney, St. Xavier's College was at a distance of about 800 mts., St. Britto's High School, St Mary's High School, New Goa High School (Amonkar's), Janata High School were all situated within a distance of about 1.5 kms. and there were hospitals such as Bhagyoday, Dr. Ratan's, Asilo, Holy Cross, within the radius of 1.5 kms. The Municipal market, the shopping center, the Kadamba bus stand too were situated within the same distance while Pedem Sports Complex was at a distance of about 2 kms., while the Dhuler Sports

Complex was at a distance of 1.5 kms. away. He had also stated that road facilities were touching the acquired land. In fact, the Land Acquisition Officer's award dated 29/10/1987 shows that the acquired land was separated by a tarred road from an existing Housing Board Colony, land for which was acquired by notification published on 17/12/1983. In other words, the acquired land had building potential and was suitable for construction and in fact was acquired for building purposes. As regards the sale deed dated 17/03/1979 which was otherwise of a developed plot as stated by Verlekar/AW3, the Appellant's attorney stated that it was formerly a stone quarry, but according to Verlekar/AW3, it had all facilities like water, electricity, telephone etc. As per Engineer Macedo/AW2 this plot was situated at a distance of about 700 mts. from the acquired property.

7. The learned trial Court after assessing the evidence produced on behalf of both the parties observed that the rate of the acquired land could be reasonably fixed at around Rs. 72/- per sq. mt. This the learned trial Court did by escalating the price of the plot land by 10%, considering that the sale deed was of 17/03/1979 and further after taking a deduction of 40% as the acquired land was a vast area while the plot of the sale deed was a smaller plot of about 400 sq. mts. At the same time, the learned trial Court further increased the said rate to Rs. 75/- per sq. mt. and again to Rs. 80/- per sq. mt. and this the learned trial Court did for no apparent reasons.

8. We have heard learned Counsel on behalf of both parties. In our view, assessing the compensation payable to the Communidade based on the said sale deed dated 17/03/1979, per se could not be faulted. Similarly, the escalation of price by 10% considering that the sale deed was executed about 5½ years prior to this acquisition. The price therefore could have been worked out to Rs.125/- in the year of acquisition. A Division Bench of this Court in the case of ***IDC V/s S.N. Sardessai*** (unreported judgment dated 15/09/2004 in First appeal No. 150 of 2003) relying on ***Special Land Acquisition Officer, BTDA, Bagalkot V/s Mohd. Hanif Sahib Bawa Sahib (2002 (3) SCC 688)*** held that appreciation or escalation at 10% per year was neither excessive or unreasonable, in case of urban land. However, the learned trial Court, though gave a deduction of 40% on account of vastness of the acquired area in relation to the plot of the sale deed, the learned trial Court did not consider giving any deduction towards development of such area considering that the plot of the sale deed was a developed plot. It is now well settled that when no sales of comparable land are available and there are large chunks of land having been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be

formed *(*see ***Land Acquisition Officer Revenue Divisional Officer, Chittor V/s L. Kamalamma (Smt.) dead by LR's & Ors. [1998 (2) SCC 385])***.

9. In ***Chimanlal HargovinddasV/s. Special Land Acquisition Officer, Poona & Anr. (1998 (3) SCC 751)*** which case still remains as locus classicus, the Apex Court has set out general guide lines for determining the market value of land under Section 23 of the Act. The Court has stated that:

> "It is common knowledge that when a large block of land is required to be valued, appropriate deductions has to be made for setting aside land for carving out roads, leaving open spaces and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the Court having regard to the shape, size and situation of the concerned block of land etc. There cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially question of facts depending on the facts and circumstances of each case."

10. As noted by the Division Bench of this Court in unreported decision dated 15/09/2004 in ***First Appeal No. 150 of 2003*** between ***The Managing Director, Goa IDC V/s. Shri Sadashiva S.N. Sardessai and Ors.*** as far as standard deductions are concerned it is well established that about 30% deductions are found to be just and proper but at the same time deductions could go even up to 60% depending upon the facts of each case. A deduction of 50% was taken in the case of ***State of Goa V/s President of Our Lady of Piety Church, Mardol*** (unreported decision dated 3/11/2004 in First Appeal

No. 132 of 2002). When large tract of land is developed, time is taken for formation of layout, there is waiting period for which the money would remain locked up in investment and the price is reduced when lump sum payment is made. The land in that case was much larger than the case at hand. Considering the facts of this case, where the area acquired was comparatively large and which also required to be developed, the learned trial Court ought to have taken a deduction of 45%. When such a deduction is taken the fair market value of the acquired land can be fixed at Rs. 69/- per sq. mt. (rounded off from Rs. 68.75). This market value is very close to the very price paid for plots of land sold by the Goa Housing Board, after developing the property, deducting the costs of development and sold at the rate of Rs. 61/- per sq. mt. in the year 1983 and Rs. 68/- per sq. mt. in the year 1985 as stated by the Board's Engineer Shri Radhakrishnan/RW2.

11. Nevertheless, learned Counsel on behalf of the Goa Housing Board submits that the Communidade's land was not freehold land and had restrictions for its sale imposed under the Code of Communidades, 1961 and in this context learned Counsel has placed reliance on an unreported Division Bench decision of this court dated 21/12/2004 in ***First Appeal No. 5/2004*** in the case of ***Communidade of Kerim V/s Land Acquisition Officer & Anr.*** wherein this Court referring to its earlier decision in the case of ***Communidade of Candolim V/s Deputy Collector (North), Panaji*** dated

28/09/2004 in ***First Appeal No. 218 of 2002*** observed that the land held by the Communidade is not a freehold land and its free use is not permissible as it suffers from statutory restrictions and the obvious consequences that would follow from the same is on its market value and therefore such land could not be compared with other sale instances in respect of the freehold land.

12. The above disadvantage which the Communidade land had by way of statutory restrictions or impediments could certainly be sounded in terms of a further deduction. We are therefore inclined to make a further deduction and considering the facts of this case, fix the market value of the acquired land at Rs. 55/- per sq. mt. with all consequential statutory benefits.

13. Consequently, we allow the appeal partly and modify the impugned award dated 7/01/2003 and fix the market value of the acquired land at Rs. 55/- per sq. mt. with all consequential statutory benefits.

R.M.S. KHANDEPARKAR, J.

N.A. BRITTO, J.

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